

AMENDED IN SENATE APRIL 22, 1996

**SENATE BILL**

**No. 1726**

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**Introduced by Senator Wright**

February 22, 1996

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An act to amend Sections 397, 404, 404.2, 404.3, 404.4, and 404.8 of, and to add Sections 403 and 404.9 to, the Code of Civil Procedure, relating to civil procedure, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1726, as amended, Wright. Civil actions: coordination.

Existing law specifies the conditions under which the court may change the place of trial. Existing law provides for the coordination of civil actions sharing a common question of fact or law that are pending in different courts.

This bill would include among the conditions under which the court may change the place of trial, an instance where cases involving a common issue of fact or law are pending in different courts. The bill would revise and recast the provisions of existing law governing the coordination of civil actions. The bill would specify new procedures regarding coordination, including a requirement that the party making a motion for change of venue for purposes of coordination made a good faith effort to obtain agreement to the transfer from all parties, and a provision that if the case is transferred, the court may require any party who rejected an offer to stipulate to the transfer to pay to the moving party his or her costs reasonably incurred in preparing and presenting the motion. The bill would require a petition for coordination to

be supported by an affidavit stating facts showing that the actions are complex, as defined ~~by the Judicial Council~~. The bill would require the Judicial Council to provide by rule the practice and procedure for the transfer or coordination of civil actions, as provided.

The bill would declare that it would take effect immediately as an urgency statute.

Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 397 of the Code of Civil  
2 Procedure is amended to read:  
3 397. The court may, on motion, change the place of  
4 trial in the following cases:  
5 (a) When the court designated in the complaint is not  
6 the proper court.  
7 (b) When there is reason to believe that an impartial  
8 trial cannot be had therein.  
9 (c) When the convenience of witnesses and the ends  
10 of justice would be promoted by the change.  
11 (d) When from any cause there is no judge of the court  
12 qualified to act.  
13 (e) When a proceeding for dissolution of marriage has  
14 been filed in the county in which the petitioner has been  
15 a resident for three months next preceding the  
16 commencement of the proceeding, and the respondent  
17 at the time of the commencement of the proceeding is a  
18 resident of another county in this state, to the county of  
19 the respondent's residence when the ends of justice  
20 would be promoted by the change. If a motion to change  
21 the place of trial is made pursuant to this subdivision, the  
22 court may, prior to the determination of the motion,  
23 consider and determine motions for allowance of  
24 temporary spousal support, support of children,  
25 temporary restraining orders, attorneys' fees, and costs,  
26 and make all necessary and proper orders in connection  
27 therewith.



(f) When cases involving a common issue of fact or law are pending in different courts, as provided in Section 403 or 404.3.

SEC. 2. Section 403 is added to the Code of Civil Procedure, to read:

403. The court may, on motion, transfer an action to another court for—~~consolidation~~ *coordination* with an action involving a common question of fact or law within the meaning of Section 404. The motion shall be supported by an affidavit stating facts showing that the actions meet the standards specified in Section 404.1 and that the moving party has made a good-faith effort to obtain agreement to the transfer from all parties to each action. Notice of the motion shall be served on all parties to each action, and any party to either action may file papers opposing the motion within the time permitted by rule of the Judicial Council. The court to which a case is transferred may order the cases consolidated for trial pursuant to Section 1048 without any further motion or hearing.

If the cases are pending in different courts of the same county, the judge who grants the motion to transfer may also order the cases consolidated for trial in the receiving court.

The Judicial Council may adopt rules to implement this section, including rules prescribing procedures for preventing duplicative or conflicting transfer orders issued by different courts.

~~If the court hears the motion and orders the case transferred, it may require any party who rejected an offer to stipulate to the transfer to pay to the moving party his or her costs reasonably incurred in preparing and presenting the motion to the court.~~

SEC. 3. Section 404 of the Code of Civil Procedure is amended to read:

404. When civil actions sharing a common question of fact or law are pending in different courts, a petition for coordination may be submitted to the Chairperson of the Judicial Council, by the presiding judge of any such court, or by any party to one of the actions after obtaining

1 permission from the presiding judge, or by all of the  
2 parties plaintiff or defendant in any such action. A  
3 petition for coordination, or a motion for permission to  
4 submit a petition, shall be supported by an affidavit  
5 stating facts showing that the actions are complex, as  
6 defined by the Judicial Council in *Section 19 of the*  
7 *Standards of Judicial Administration*, and that the actions  
8 meet the standards specified in Section 404.1. On receipt  
9 of a petition for coordination, the Chairperson of the  
10 Judicial Council may assign a judge to determine whether  
11 coordination of the actions is appropriate or may  
12 authorize the presiding judge of a court to assign the  
13 matter to judicial officers of the court in the same manner  
14 as assignments are made in other civil cases.

15 Notwithstanding any other provision of law, when civil  
16 actions sharing a common question of fact or law are  
17 pending in a superior court and in a municipal court of  
18 the same county, the superior court may, on the motion  
19 of any party supported by an affidavit stating facts  
20 showing that the actions meet the standards specified in  
21 Section 404.1, order transfer from the municipal court  
22 and consolidation of the actions in the superior court.

23 SEC. 4. Section 404.2 of the Code of Civil Procedure  
24 is amended to read:

25 404.2. A judge assigned pursuant to Section 404 who  
26 determines that coordination is appropriate shall select  
27 the reviewing court having appellate jurisdiction if the  
28 actions to be coordinated are within the jurisdiction of  
29 more than one reviewing court. The assigned judge shall  
30 select the reviewing court which will promote the ends  
31 of justice as determined under the standards specified in  
32 Section 404.1.

33 SEC. 5. Section 404.3 of the Code of Civil Procedure  
34 is amended to read:

35 404.3. (a) A judge assigned pursuant to Section 404  
36 who determines that coordination is appropriate shall  
37 order the actions coordinated, report that fact to the  
38 Chairperson of the Judicial Council, and the Chairperson  
39 of the Judicial Council shall either assign a judge to hear  
40 and determine the actions in the site or sites the assigned

1 judge finds appropriate or authorize the presiding judge  
2 of a court to assign the matter to judicial officers of the  
3 court in the same manner as assignments are made in  
4 other civil cases.

5 (b) When an action pending in a superior court is  
6 sought to be coordinated with an action pending in a  
7 municipal court located in the same county, the presiding  
8 judge of the superior court may, as an alternative to  
9 coordination, order the municipal court action  
10 transferred to the superior court and consolidated with  
11 the superior court action.

12 SEC. 6. Section 404.4 of the Code of Civil Procedure  
13 is amended to read:

14 404.4. The presiding judge of any court in which there  
15 is pending an action sharing a common question of fact or  
16 law with actions coordinated pursuant to Section 404, on  
17 the court's own motion or the motion of any party  
18 supported by an affidavit stating facts showing that the  
19 action meets the standards specified in Section 404.1, or  
20 all the parties plaintiff or defendant in any such action,  
21 supported by an affidavit stating facts showing that the  
22 action meets the standards specified in Section 404.1, may  
23 request the judge assigned to hear the coordinated  
24 actions for an order coordinating the action. Coordination  
25 of the action shall be determined under the standards  
26 specified in Section 404.1.

27 SEC. 7. Section 404.8 of the Code of Civil Procedure  
28 is amended to read:

29 404.8. Expenses of the assigned judge, other necessary  
30 judicial officers and employees, and facilities for cases  
31 coordinated under Section 404 shall be paid or  
32 reimbursed by the state from funds appropriated to the  
33 Judicial Council.

34 SEC. 8. Section 404.9 is added to the Code of Civil  
35 Procedure, to read:

36 404.9. Any duties of the presiding judge specified in  
37 this chapter may be delegated by the presiding judge to  
38 another judge of the court. The term "presiding judge,"  
39 as used in this chapter, includes the sole judge of a court  
40 having only one judge.

1 Notwithstanding any other provision of law, the  
2 Judicial Council shall provide by rule the practice and  
3 procedure for the transfer or coordination of civil actions  
4 in convenient courts under this chapter, including  
5 provision for giving notice and presenting evidence.

6 SEC. 9. This act is an urgency statute necessary for the  
7 immediate preservation of the public peace, health, or  
8 safety within the meaning of Article IV of the  
9 Constitution and shall go into immediate effect. The facts  
10 constituting the necessity are:

11 In order to enact important procedures for the  
12 coordination of civil actions for the purpose of enabling  
13 each court to manage its workload in an efficient manner,  
14 it is essential that this act take effect immediately.

